

Leahy in Indonesia: Damned if You Do (and Even if You Don't)

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Abstract: In preparation for his impending visit to Indonesia, President Barack Obama is considering the paradoxical question of military reengagement with the Indonesian army's Special Forces Command (called KOPASSUS). An important part of this policy calculus is based on the current laws to deny military and law enforcement training to known foreign human rights violators, collectively known as the "Leahy Laws." However, the text of the Leahy Laws considers neither the natural changes in the make-up of military units nor the important reforms the Indonesian armed forces have made in its own training and advocacy of human rights practices. A closer look at how the law is applied reviles that U.S.-Indonesia policy in general—and military-to-military relations in particular—are unnecessarily damaged by the Leahy Laws and details the consequences of good intentions gone awry.

Keywords: human rights vetting, Indonesia, KOPASSUS, Leahy Amendment

Much is riding on President Barack Obama's June visit to Indonesia, where there is great anticipation that the former boyhood resident of the nation and now the most powerful man in the world can finally clear up and equalize what many Indonesians see as a patronizing attitude toward their country by the United States. Indonesia seeks a public affirmation of trust from the United States for its transformation from a dictatorship with an abysmal human rights record, wracked

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by the Asian Financial Crisis, into a vibrant democracy with solid economic growth.

For the United States, this will be a chance to demonstrate to other Muslim nations its ability to cooperate with the world's largest Muslim majority country on issues ranging from environmental conservation, regional maritime security, improving the quality of decentralized education, and ongoing efforts to rehabilitate the infrastructure and improve health care. However, there will also be a sense of dread during the visit that bilateral military relationship issues will once again rise to the surface. This may set off yet another round of debate over the Leahy Amendment—a measure designed to restrict U.S. military and law enforcement aid to known human rights abusers. The debate centers on how the law is applied in the case of Indonesia and its lingering effects on the countries' military relations.

In the period of time roughly coinciding with the recognition of Indonesian independence in 1947 until the military intervention into East Timor on December 7, 1975, military relations mirrored the overall relationship between the two nations. Indonesia's vast size, its position as the fourth most populous nation—and the world's largest Muslim population—and its strategic location aside the Straits of Malacca, make relations between the United States and Indonesia of vital importance by any standard. However, there is little historical affinity between the two nations, making it difficult for domestic leaders to develop support for improving relations.

Today, U.S.-Indonesian military relations are primarily based on the shared goals of maintaining peace, security, and stability in the region and engaging in dialogue on threats to regional security. Counterterrorism cooperation has increased dramatically since the initial terrorist attack in Bali in October 2002 and is principally focused against the Indonesia-based Jemaah Islamiyah (JI) group. This ongoing cooperation exists despite a lack of formal security treaties.

However, in the period between 1975 and the Indian Ocean Tsunami in December 2004, the bilateral military relationship was in general decline, marked by mercurial levels of restriction on U.S. military assistance that were eventually lifted in November 2005.

The combined effects of the events of September 11, 2001, the 2002 terrorist attack in Bali, the Indian Ocean Tsunami, and Indonesian cooperation with the Federal Bureau of Investigation in the investigation of the August 2002 murder of two American teachers at Termika eventually created conditions in November 2005 that enabled Secretary of State Condoleezza Rice to certify that Indonesia had met basic levels of transparency and cooperation to warrant the lifting of all sanctions on military aid, thus officially marking the beginning of "normalized" military relations.

The original Leahy Amendment, initially introduced in 1997, prohibited specific forms of counternarcotics aid for foreign law enforcement and military units if the secretary of state determined that there was credible evidence implicating

that foreign unit in human rights violations. The specific aid affected by the Leahy Amendment was aid controlled by the state department's counternarcotics programs. While this provision cut off all counternarcotics aid for those units credibly alleged to be implicated in human rights violations, it was also designed to allow for the resumption of that aid if steps were taken to bring those responsible to justice. By 1998, the Clinton administration decided to expand the criteria of the amendment to all sources of U.S. military as well as counternarcotics aid. By that year, the concept had taken root in the Senate, and its version of that year's foreign operations appropriations bill, known as the "expanded" version of Leahy, for the first time extended the human rights restrictions to all forms of State Department military aid, not just the limited counternarcotics aid in the original version. Later, this same language reoccurred in all subsequent yearly Department of Defense (DOD) appropriation bills and continues today. The provision, however, did not meet with wide acceptance in Congress.

The Clinton administration's decision to widen the scope of the Leahy Amendment was based on the ideals of (1) accountability, which required U.S. embassies to know which military units were selected to receive aid to evaluate their records; (2) assurance, to prevent U.S. complacency and to restrict aid to known human rights violators; and (3) integrity, meant to encourage allies to respect the rule of law—including human rights—and not to alienate the local population by violating their rights.

Initially, some in Congress were reluctant to embrace Leahy. Its 1997 introduction met with resistance from many Congressional members from both parties with interests in U.S. counternarcotics operations abroad. Many wanted counternarcotics aid to flow faster, particularly to Colombia to contain the threat of expanding drug-fueled violence. A group of House Republicans, convinced that the administration's interpretation of the Leahy Amendment had effectively blocked aid to Colombia, successfully lobbied their leadership to delete it from the House version of the foreign operations bill for that year.

Aside from the effects of Leahy, the overall lifting of military sanctions in November 2005 did not instantly restore a normal military relationship; it merely set the stage for it. Nor was there any great clamor to immediately reengage with the United States within the Indonesian military, although there are a few notable exceptions. This was particularly true of the Indonesian navy, where the prolonged effects of the sanctions had taken a significant toll.

Partly as a result of the corrosive effects of the sanctions, known in Indonesia as "the embargo," and partly as a result of U.S. policies in the Middle East, most Indonesians remain skeptical of U.S. intentions. Although the current Yudhoyono administration continues to seek closer military ties with the United States, it is careful to maintain Indonesian neutrality.

Regardless of a recipient nations' current or past eligibility status of U.S. grant aid, vetting for human rights violators as spelled out in Leahy remains part of

any security-related foreign assistance provided by the United States. The specific questions in regard to Indonesia is how the Leahy provisions are enforced, how they compare to the levels and standards of human rights vetting for other nations, and what the adequate “steps” are as outlined in the Leahy language to rehabilitate units with troubled pasts. Human rights groups and their allies in Congress continue to point to a lack of accountability in terms of punishing high-level Indonesian military officials for past abuses. However, some Indonesian watchers, while acknowledging these abuses, point out that the text of the “Leahy” law fails to consider the natural attrition of military units, the personnel who committed these past abuses, and the importance of reforms that the Indonesian armed forces have made in their own training and advocacy of correct human rights practices.

Summary

The current laws designed to deny military training to foreign human rights violators, known collectively as the Leahy Laws, leave much to be desired in its application. The inconsistency in applying these laws damages U.S. bilateral relationships with many valuable allies in counterterrorism. This is particularly true of Indonesia, where the capricious application of unwritten human rights policy precludes a constructive military relationship with a strategically placed nation, and reinforces widely held views by many foreign nations that the United States routinely practices a double standard in its views and practice of support for human rights. Although the State Department is responsible for administering this program, there are ongoing legal battles and deep divisions within the department as to interpretations of the law that frequently result in mixed or evolving guidance on its application, even when it is enforced. This situation has State split between, on one side, East Asian pragmatists and their allies in the Office of the Secretary of Defense, who recognize the need to move ahead and, on the other side, the legal and human rights bureaus that vehemently believe that relations with Indonesia cannot move forward without an accounting of past human rights abuses. Powerful human rights lobbies and congress members and their staffers who harbor deeply held beliefs regarding Indonesia’s past misdeeds complicate the situation further. Currently, there is no resolution in sight—only increasing likelihood that this issue will continue to fester into the immediate future, further inhibiting a full military relationship between the United States and Indonesia, greatly reducing U.S. access and influence in the region.

The Stakes

U.S. credibility is on the line. Although it is clearly not in the best interests of the United States to train the next Manuel Noriega, neither is it in U.S. interests to unilaterally eliminate friendly or at least cooperative nations from joining militarily in counterterrorism efforts. From an absolutist viewpoint, the options are a choice

between U.S. values: either defend the United States or defend human rights, one of the strongest principles of the United States. On the surface, and certainly in the minds of many U.S. agencies and policymakers on the opposite side of the question, these objectives appear mutually exclusive. But in the Indonesian context, the reality beyond the values is more complex and raises the question of when the past is really the past in terms of prior human rights abuses. When is a unit “clean?” When no one in it was posted to it when violations took place? When no one in the entire chain of command was anywhere in the armed forces when violations took place?

This policy dilemma is being played out on the world stage to an attentive audience. Most countries in Southeast Asia are closely following this debate out of self-interest. For those parts of the foreign governments that favor military cooperation with the United States (normally a silent group) and understand the importance of U.S. security assistance to their own nations’ welfare, this internal U.S. argument has a direct impact on the quantity and quality of that assistance. For other elements that are distrustful of U.S. motives and actions around the world (usually a noisy element), this argument provides proof, no matter the outcome, that the United States is really a malicious force in the world that lives a double standard. This sentiment fits neatly with widely held views of the United States among Indonesian nationalists and other groups with pro-Islamic agendas.

In terms of potential contributions in counterterrorism, Indonesia is in a unique position to provide critical cooperation against both the al-Qaeda-linked *Ji* and the Abu Sayyaf Group (ASG) in the southern Philippines. In an incredible paradox, the Indonesian military’s premiere direct action counter-terrorist (CT) force, Unit 81 of the Indonesian army’s Special Forces (known as KOPASSUS), is the most toxic in terms of its past human rights record and cannot directly be engaged by the United States. This restriction precluded any security coordination during the Indonesia-hosted Bali Climate Change Conference in December 2007. In the event of a hostage or barricade situation involving any of the scores of U.S. officials participating, the U.S. would have been unable to work with the very unit tasked with the rescue mission.

The Indonesian military’s opinion on the subject is straightforward. Indonesia is now a democracy, the military is no longer under the direct control of a dictator, and the Indonesia of today is no longer the Indonesia of 1997. Indonesia holds the view that U.S. willingness to reengage with KOPASSUS is a litmus test of overall U.S. seriousness in rebuilding the military relationship. Indeed, many members of the Indonesian military remain distrustful of the United States, maintaining that the Indonesian military still suffers under U.S. restrictions despite a stream of senior U.S. military and political leaders claiming the contrary, bearing proof in the form of reinstituted State Department Foreign Military Financing (FMF),¹ and unrestricted International Military Education and Training (IMET)² to assist Indonesia’s military.

The Leahy Law

The Leahy Amendment was first enacted as part of the 1997 Foreign Operations Appropriations Act (Public Law 104-208). The amendment was named for its sponsor, Senator Patrick Leahy (D-Vermont), and it prohibited the Foreign Operations, Export Financing, and Related Program Appropriations Act (FOAA) from providing assistance to foreign security force units implicated in gross human rights violations. Initially the law was narrowly focused on the State Department's International Narcotics Control Program. It was expanded in 1998 to include all security assistance programs using funds appropriated through the FOAA. There is a second Leahy Amendment, found as recurring language in the annual Defense Appropriations Acts, which affects DOD funded training.

The most recent version of the Leahy Amendment, section 551 of the Department of State's FOAA for FY2006 (Public Law 109-102), reads as follows:

None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such a unit has committed gross violations of human rights, unless the Secretary determines and reports to the committees on appropriations that the government of such a country is taking effective measures to bring the responsible members of the security force unit to justice: Provided, that nothing in this section shall be construed to withhold funds made available under this Act from any unit of the security forces of a foreign country not credibly alleged to be involved of gross violation of human rights; Provided further, That in the event funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly notify the foreign government of the basis of such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring responsible members of the security forces to justice.³

Inside an embassy, the responsibility to administer human rights compliance and the conduct of vetting rests with State Department. However, many of State's programs that provide assistance are actually administered by other U.S. government agencies. This makes such agencies as the Department of Defense (DOD) and the Department of Justice (DOJ), and in some rare instances, the U.S. Agency for International Development (USAID) stakeholders in the overall program to identify and eliminate human rights violators from U.S.-funded training in a process collectively known as human rights vetting (HRV).⁴

The Background

There is little room for dispute that Indonesian security forces under President Suharto and his predecessor President Sukarno were focused on maintaining the regime and were responsible for significant human right abuses throughout Indonesia. KOPASSUS stands accused of gross human right violations throughout a long-running independence movement in Aceh and East Timor, especially in the

period leading up to and following an independence referendum in 1998, as well as in the violence surrounding the change of government in May 1998. KOPASSUS, along with other Indonesian National Police (POLRI), possesses a long history of politically motivated disappearances and kidnappings in the predemocracy era. The events in East Timor roughly coincide with the initial introduction of the Leahy Amendments before Congress. Because of this, many Indonesians (as well as many Indonesia watchers) believe the Leahy Amendment was crafted with Indonesia in mind.

As a direct result of the events in East Timor, the United States enacted military restrictions that precluded most routine engagement activities between the two countries, further restricted U.S.-funded training, and placed a complete halt on the transfer or purchase of U.S. military equipment to Indonesia.⁵ Ironically, while the aim of the restrictions was to punish KOPASSUS and the other elements of the Indonesian military that participated in (both real and alleged) human rights abuses across Indonesia, the weight of these new restrictions fell mostly on the Indonesian air force (TNI-AU) and navy (TNI-AL), who depended extensively on U.S.-made equipment and had little if any history of human rights abuses. As the supplies of U.S.-made spare parts and components began to dry up, the Indonesian military's readiness and capabilities began to slip, causing anger, resentment, and distrust toward the United States over the "embargo."

However, three disconnected events, all culminating in 2005, set off a chain of events that brought the current arguments over U.S. policy toward modern Indonesia and its past to a head.

1. The results of a U.S.-Indonesian investigation into the murders of two U.S. citizens in Papua province in 2002. Separately, the United States had urged the Indonesian government to identify and bring to justice the perpetrators of the August 2002 ambush murders of two U.S. teachers near Tamika in the Papua province.⁶ In February 2005, the secretary of state certified that Indonesian cooperation in the murder investigation had met the conditions set by Congress, enabling the resumption of full IMET. Eight suspects connected to a local parapolice organization were arrested in January 2007, and in November seven were convicted.
2. The Indian Ocean tsunami and the lifting of U.S.-military sanctions against Indonesia. The issue of military cooperation between the United States and Indonesia was largely idle until the events of September 11, 2001, when the initiation of the Global War on Terror (GWOT; recently renamed Overseas Contingency Operations) forced a review of U.S. policy, especially toward those regions suffering from terrorist activity. The first Bali bombing in 2002, followed by the JI-sponsored bombings in Jakarta of the JW Marriot in 2003 and the Australian embassy in 2004, all contributed to a growing concern in Congress that the time to reapproach Indonesia was at hand.⁷

At the same time, the Indian Ocean Tsunami of December 26, 2004, that killed nearly 500,000 Indonesians provided the catalyst for normalization.⁸ Realizing that U.S. sanctions were directly affecting the Indonesian armed forces' ability to respond to the disaster with their C-130 aircraft, Secretary of State Rice moved to ease the restrictions for U.S.-origin equipment used for humanitarian purposes.

The effect of unfreezing Indonesian spare parts from the United States breathed new life and created goodwill between the nations that carried momentum through 2005. The undersecretary of state for political affairs, under authority delegated by the Secretary Rice, exercised a national interest waiver provision provided in the FY2005 FOAA to remove congressional restrictions on FMF and lethal defense articles on November 22, 2005, and represented a reestablishment of normalized military relations. This allowed the United States to provide greater support, all specifically targeted toward efforts to reform the military, increase its ability to respond to national and regional disasters, and promote regional stability. Unfortunately, the manner in which the secretary authorized the signing of the waiver ruffled the feathers of some Democratic lawmakers, staff, and human rights activists, who felt she had used her authority to waive conditions on Indonesia despite "a lack of substantive progress in resolving Human Rights abuses and improving civil control of the military."⁹ They felt this initiative was altogether counterproductive to keep the pressure on Indonesia for its past human right abuses. These hard feelings would resurface after the 2006 midterm elections, as the minority became the new majority.

The formal lifting of military sanctions opened the question of allowing the U.S. Special Forces to conduct joint combined exercise training (JCET) with KOPASSUS Unit 81 and other Indonesian CT forces. No written policy giving authority to proceed existed, nor did any to the contrary.¹⁰ As 2005 came to a close, U.S. Pacific Command in Honolulu and its Special Forces subordinate element, Special Operations Command, Pacific (SOPAC) began to schedule JCETs and other forms of engagement with Indonesian CT forces. PACOM, along with the U.S. ambassador to Indonesia, planned a slow and deliberate course to test, evaluate, and then reengage KOPASSUS through a series of small contacts as lead-up events to a full JCET (one that emphasized nonlethal training) placed on the calendar for April 1, 2008. The JCET itself was deliberately designed to engage a "composite unit" composed of individual KOPASSUS members who were either too young to have participated in the human rights abuses or those individuals known not to have participated in any way in such events. The Indonesian army (TNI-AD), too, agreed with this approach during bilateral military discussions with USPACOM and during senior level discussions both in Washington and Jakarta, but was clearly maintaining

a watch-and-see attitude because many within the TNI were split over the wisdom of full re-engagement with the United States or its intentions.

3. The publishing of the 2005 Government Accountability Office (GAO) report. The U.S. GAO report number GAO-05-793 entitled "Southeast Asia: Better Human Rights Reviews and Strategic Planning Needed for U.S. Assistance to Foreign Security Forces" was released on July 29, 2005. This report concentrated on assistance provided to the Philippines, Indonesia, and Thailand. The GAO (1) described the nature and extent of U.S. assistance to foreign security forces in the Philippines, Indonesia, and Thailand; (2) assessed the controls used to achieve compliance with human rights restrictions on U.S. funding of foreign security forces in these countries; and (3) assessed the U.S. government's national security assistance strategy.

The GAO's review found that the United States allocated about \$265.7 million in assistance to equip and train security forces in the region. The Philippines received \$179.6 million, whereas Thailand received \$38.6 million, and Indonesia \$47.5 million from 2001 to 2004. They found no evidence that U.S. officials checked into the backgrounds of an estimated 6,900 foreign security trainees—about 4,000 Indonesian, 1,200 Filipino, and 1,700 Thai police—trained by DOJ and State law enforcement assistance. They found better evidence of vetting and training programs managed by DOD. State issued new guidance in February 2005 intended to improve the HRV process and establish a database of human rights abuse allegations. GAO found only limited compliance with this policy.

Additionally, they found State had not produced a clear and coherent national security assistance strategy that met the objectives that Congress urged State to address in 2000 legislation. State's 2003 strategy met only two of nine policy objectives outlined by Congress. Several State and DOD planning documents, although not collectively providing a complete national security strategy, address some of the legislation's objectives.

The GAO recommended the Secretary of State should (1) strengthen management controls for vetting foreign security forces by clarifying existing guidance to embassies and (2) develop and periodically report to Congress an integrated strategic plan for all U.S. government assistance that provides training and equipment for foreign security forces.

To its credit, the State Department itself recognized many of these concerns before the issuance of the GAO report, which in turn generated the aforementioned guidelines in February 2005. State, in its attempt to meet the congressional objectives, announced that it had established a new human right database, the Abuse Case Evaluation System (ACES), to serve as a clearinghouse for information on alleged human rights abuses (and intended to link to the Department of Homeland Security's master database). According to the guidance, data would come

from sources currently used for human rights vetting, such as post reports, press, nongovernmental organizations, national human rights commissions, and other sources.

The Appearance of a Double Standard

While State Department provides interpretation of the relevant laws and sets the overall HRV policy, the actual conduct of the vetting is an individual embassy responsibility. Potential U.S.-funded trainees from different countries frequently have different vetting results for like allegations. In Leahy's language, the key phrase is "credible evidence of a gross human rights violation." However, the wording also specifies "units" as opposed to individuals. In Indonesia, the embassy-vetting policy became "prove the negative," or in other words, proving the individual can never have been at a place or time a human rights violation was committed. Part of this "due diligence," is the legacy of the 2005 GAO report. In the case of Indonesia, in a policy newly initiated on April 1, 2008, any individual ever assigned to a KOPASSUS unit, no matter the age of the individual or assignment history, is ineligible for U.S.-funded training. This new stipulation would later prove to have a profound effect on U.S.-Indonesian military relations.

Many foreign nations, including Indonesia, accuse the United States of applying double standards on just about any aspect of a given policy. More often than not, these accusations are baseless, taken out of context, or misinterpreted. However, our foreign critics occasionally have a point, and Indonesia, in this instance, they clearly do. The application of the Leahy Amendment standards for the countries that receive U.S. security assistance, to be kind, is uneven.

It is doubtful that the Leahy standards applied to Indonesia are applied anywhere in the world, with the notable exceptions of Columbia and Sri Lanka, and they place Indonesia into a category normally reserved for Iraq or Afghanistan. No other nation in the Pacific Rim (except Sri Lanka) must face such scrutiny. Moreover, these types of HRV standards are not applied to the two nations that consume roughly 70 percent of all U.S. security assistance granted worldwide—Israel and Egypt.¹¹

Host nations in Southeast Asia are aware of the effects of HRV on their neighbors. In the case of Indonesia, units, either cohort or composite, receiving training must undergo full vetting to include the history of the unit itself. By comparison, unit vetting in the Philippines consists of vetting only the unit commander or most senior individual in the case of a composite unit. Many Asia observers believe the Philippines, which receives much higher levels of U.S. security assistance and with an equally spotty human rights record, do not receive the same level of scrutiny for alleged human rights abuses than other places in the region. This perception is shared by the vast majority of Indonesia's military, who frequently remind U.S. military assigned to Jakarta that U.S. vetting standards are higher for Indonesia than for other countries. In another high-profile example in early 2008, U.S. Special

Operations Command invited the chiefs of all Special Forces or chiefs of national CT forces to a worldwide conference at its headquarters at McDill Air Force Base in Tampa, Florida. All nations invited only had to vet the chief of that nation's principal CT organization.¹² Every nation's military chief invited to the conference attended, with the exception of one. That exception was Indonesia, as State was unable to successfully vet the Chief of the Indonesian KOPASSUS because he was a member of his own command.¹³ The individual had a personal history that would have allowed any other Indonesian Armed Forces chief to attend, but was denied solely based on the cumulative KOPASSUS record of past human rights abuse.

One State Department innovation from the GAO report, as previously mentioned, was the ACES database. By 2008, however, State abandoned its efforts to populate the database. State gave up on ACES for two reasons. First, when State insisted on all source input, it became evident that many nongovernmental organizations, beholden to their constituents and donation sources were not completely objective when leveling accusations against a foreign security force. Many struggled with the exact definition of a "gross human right violation." Consequently, the "blogosphere," and thus the ACES database became overcrowded with unsubstantiated human rights allegations.¹⁴ The second reason for the failure of ACES is simply technical. State, after several years of trying, never came to agreement with the Department of Homeland Security on how to combine the State system into the Homeland Security master database that provides information across the government, helping to prevent terrorists, known criminals, and human rights abusers from entering the country.

In late March 2008, State Department had second thoughts and abruptly cancelled the long-scheduled April 1 JCET with a KOPASSUS composite unit consisting of "cleanly vetted" individuals. For the State Department's Bureau of Democracy, Rights, and Labor, known as DRL, this ushered in a period in which KOPASSUS-like restrictions were applied to all Indonesian military units, many of which had no pertinent record of past human rights abuses (until that time, most units without human rights violations history were vetted by the record of their current commander). One of the most puzzling rulings from DRL overturned an embassy HRV clearance on two individuals to participate in State Department-sponsored peacekeeping training, known as the Global Peace Operations Initiative.¹⁵ In one instance, a Sergeant Waskim, a squad leader in the 203rd Infantry Battalion of the Indonesian army, was denied training because the 203rd was encamped in Aceh, two kilometers from where several bodies were unearthed. The 203rd was never implicated in the killings, only in the area at the time. In the case of Waskim, the incident occurred two years before he joined the unit. In the other instance, the same training was denied to a Lieutenant Bayu Yudha Pratama, a platoon commander assigned to the 202nd Infantry Battalion of the Indonesian army. The 202nd too was also present in Aceh during a time and place of human rights violations, but these violations occurred two years before

Bayu's birth in October 1980. Even Indonesian military officials who were hardened to U.S. pickiness on HRV had difficulty accepting that these two individuals, both with exemplary military records, were turned down for the capstone GPOI training event for USPACOM.¹⁶

The Current Deadlock

The Leahy Amendment in its current form, with its emphasis on past accountability and on unit vetting, leaves a great deal of room for interpretation. For example, the natural tendency that units usually turn over 100 percent in personnel over a three-to-four-year period was something unforeseen while drafting in the original Leahy language. This issue remains unresolved today, and interpretations of the intent of Leahy vary among the branches or departments within the U.S. government. Another issue is the management of overall human rights policy within the State Department, as there is no single bureau or section that "owns" human rights as an issue; or, simply put, nobody within State serves as a single point of contact or coordination on the subject.

With the "normalization" of military relations in November 2005 came a significant increase in the number and size of engagements. This accelerated cooperation, combined with the lifting of sanctions and the influx of security assistance to Indonesia, dramatically increased the number of HRVs conducted at the embassy and by DRL in Washington. This increase in workload and Indonesian participation in further events that required HRV began to become onerous to administer both at the embassy and at DRL. Delays and arguments over eligibility on who was "cleared" soon spilled over to other agencies and within the State Department itself. DRL frequently had questions for State's regional bureau, the East Asia Pacific (EAP) Bureau, as well as its legal bureau, known as L, for interpretation of the Leahy language. This led to more questions sent up the State Department's chain of command as to what precisely U.S. policy was toward Indonesia. Moreover, DRL was hearing directly from members of Senator Leahy's staff. Now part of the majority in Congress, they remained concerned that the expanded scope and increase in military activities spelled an erosion of U.S. concerns for Indonesia's past.

A New Beginning with the Obama Administration?

Even leading up to the 2008 general elections in the United States, the expectations for Obama to replace the largely vilified President George W. Bush were sky high.¹⁷ The prospects that a future U.S. president had some of his schooling in Indonesia were intoxicating, and there was a hope that he was someone who understood Indonesia. Apparently, the government took on the initiative to reconvene "Barry's" first-grade class for a photo in the English-language *Jakarta Post*, and his teachers were interviewed on Indonesian television, remembering him as an apt student. These sentiments were later reprised in a series in the *New York*

Times prior to the Obama inauguration, focusing on the cities in which Obama had lived that “helped shape the man that he is.”¹⁸

Postelection, indications are, politically speaking, that the overall relationship between the United States and Indonesia is on the upswing, as reported from these excerpts from a recent *Jakarta Post* article entitled “Obama Asks Indonesia to ‘Join Hands’”:

U.S. President Barack Obama called his Indonesian counterpart Susilo Bambang Yudhoyono on Friday to express Washington’s willingness to involve Jakarta in tackling global issues, including the environment and the financial crisis.

Obama also told Yudhoyono in the 10-minute phone conversation that he wanted to build “a comprehensive partnership” between the two countries, said Indonesian presidential spokesman Dino Patti Djalal.

Regarding bilateral relations between Indonesia and the United States, Dino said Obama agreed with Yudhoyono’s proposal on a comprehensive partnership between the two countries, and was willing to realize it.

He added Obama still maintained his fluency in pronouncing Indonesian words.

“When President [Yudhoyono] began with, ‘Apa kabar?’ [How are you?], Obama answered in Indonesian, ‘Baik-baik’ [I’m fine],” Dino said.¹⁹

This kind of reporting from Jakarta is a remarkable departure from the press treatment Bush received. If fact, the same article closes with these references to the previous administration:

But he [Dino Djalal] said the two leaders did not specifically discuss relations between the United States and the Muslim world.

Vice President Jusuf Kalla touched on this issue when he met with his U.S. counterpart Joe Biden in Washington in early February.

Kalla said during the meeting that Indonesia hailed the changes Obama had initiated, but was curious to see if they would have an impact on relations between the West and the Muslim world, which took a hammering under the administration of former president George W. Bush.²⁰

The new administration is clearly off to a good start with Indonesia, but there are several thorny defense-related issues that lie ahead with the potential to dampen some of the genuine Indonesian enthusiasm for the Obama administration.

Given the current atmosphere in Washington for a continuation of partisan politics, the solution to enhanced U.S.-Indonesian military cooperation will more than likely be a purely Democratic one given that party’s control of both the executive and legislative branches. While, on the surface, this sounds encouraging for those who wish to see a more modern approach to defense relations and “getting things done” with Indonesia, many (but not all) of Indonesia’s harshest critics and many of the human rights lobbies are resident within the Democratic Party. Moreover, it appears that with the wide margin of their majority, Indonesia’s Congressional critics are in an even stronger position to increase diplomatic pressure, or more

likely, attach conditions on security assistance grant funding as a form of leverage to encourage accountability over past human rights abuses.

However, there may be a larger question for the Obama administration. Should it even attempt to address an enhanced military relationship and risk a contentious in-house fight when other, softer, nondefense avenues are available to advance the overall bilateral relationship between the nations? Or is Indonesia that much of a priority when considering the wide variety of diplomatic challenges currently facing the United States?

Secretary of State Hillary Clinton's February 2009 Visit to Jakarta

The Obama administration's approach seems to be one in which the role of defense is largely downplayed. Secretary of State Hillary Clinton has sent an important message about Indonesia in her initial diplomatic visit abroad. This is a strong indication that the new administration is taking the bilateral relationship with Indonesia seriously.²¹ However, the new smart power²² may well diminish the role of defense in dealing with Indonesia. According to the *Jakarta Post*, "Secretary Clinton said during her visit to Jakarta that 'building a comprehensive partnership with Indonesia is a critical step on behalf of the United States' commitment to smart power.'" ²³ The *Jakarta Post* also states, "'President Obama said he wanted to work together with Indonesia in coping with global issues, such as climate change,' Dino told the *Jakarta Post*."²⁴

During her visit to Jakarta, Secretary Clinton did not meet with any Indonesian defense official; instead, her visit focused on other areas for bilateral cooperation, such as the environment, education, and the preservation of the rapidly depleting habitat for orangutans on Borneo.²⁵ It would appear that the priority of defense has lowered in comparison to other U.S. policy interests. Appearances, however, are frequently deceiving.

In the wake of Secretary Clinton's visit to Indonesia, the State Department's request to Congress for military assistance is quietly taking a sharp increase over current levels. The FY2010 budget request by the East Asia and Pacific (EAP) bureau within State Department raises Indonesia's FMF allocation from \$15.7 million in FY2009 to \$26.23 million in FY2010. IMET, too, is projected to increase at the same sharp rate, from \$1.5 million in FY2009 to a \$2.358 million in FY2010. Working projections for the embassy in Indonesia for both FMF and IMET temper somewhat in FY 11, projecting \$20 million and \$1.8 million respectively, but are still well ahead of the slow and incremental growth normally associated with these programs.²⁶

Conclusion

The spirit and intent of Leahy is to force foreign governments to take responsibility for, investigate, and prosecute cases of human rights abuse. Leahy is really

not about individuals or even units—it is about pressuring the governments. In practice, however, sanctions affect individuals. In the case of Indonesia, these same individuals are going to be the next generation of Indonesian senior military leadership. While the need for a Leahy-type legislation to reinforce U.S. concern for human rights standards is a legitimate part of U.S. national interests, the current version of the law clearly requires revision. Most glaring is the need to modify the emphasis on unit training to include a sort of “statute of limitations” on selected units and countries to account for the natural turnover of personnel within units. Equally important, some accommodation needs to be created for individuals assigned to units that were too young to have participated in any such past misdeeds. At the very least, a modified Leahy Amendment should articulate a formula for a “tainted” unit to rehabilitate itself.

Increased levels of FMF and particularly IMET are clearly needed for the Indonesia military, who remain professionally split on the need for any sort of military relationship with the United States. Memories of the “embargo” remain strong, especially with members of the Indonesian air force and navy whose careers were shaped by operational constraints in one degree or another by U.S. sanctions, and whose services were largely absent from human rights abuse allegations. The Indonesian army, which remains the dominant service within the nation’s military hierarchy, can also benefit greatly from increased IMET levels that, more often than not, bring at least some balance to individuals who are predisposed to dislike the United States. However, Leahy HRV standards still apply to individual recipients of IMET. In the case of Indonesia, IMET, which targets the upwardly mobile within a nation’s military, will still be missing its intended audience, because KOPASSUS remains the primary wellspring of future leadership within Indonesia’s military.

In the absence of clear direction from Congress on how to conduct vetting and the application of results, the State Department should review not only its vetting procedures but also establish a clear line of authority and responsibility within the department to standardize and harmonize application of the Leahy Amendment globally, with provisions for compromise when clear U.S. security interests are imperiled. As it currently stands, no single bureau or department in State “owns” the issue, nor does any have a superior voice over the matter. Coupled with varying interpretations from one State geographic bureau to another on applying Leahy, the result is a confused ad hoc process that is impossible to explain satisfactorily to partner nations and often seems at the mercy of extreme idealism alone rather than guided by broader U.S. principles of fairness and common sense.

The Leahy Amendments are a serious cost of doing business with the United States, and our bilateral relations with those nations that are developing and evolving their governmental system from a violent or tyrannical past will remain colored, at least in part, by the omnipresence of Leahy. It is also time for vocal advocates of human rights to take account of their accomplishments and take a

more sober look at the extent their advocacy has irrevocably affected both the State Department and the DOD's direct overall security assistance strategy, and, in turn, U.S. national security interests.

As for Indonesia, the prognosis for reengagement with KOPASSUS in the foreseeable future is bleak, as are the overall prospects for a more robust bilateral military relationship with Indonesia. The United States has placed a *de facto* cap on reengagement with the Indonesian military based on its past. The Indonesian government remains convinced that the United States never truly removed military sanctions, and it will be the ongoing duty of every senior U.S. official to remind Indonesian officials otherwise. It is equally clear that Indonesia will remain suspicious of U.S. motives and actions in the region for some time. The opportunity to bring on Indonesia as a full military partner in counter-terrorism has likely been lost for a generation.

In the immediate future, a deputy's committee meeting, among the deputies of the State Department, the DOD, members of the National Security Council, and congressional leaders needs to determine exactly the kind of relationship the United States wants to have with Indonesia. Thus far, only the State Department is opposed to this approach. Because of the fractious nature of this issue at State, many there advocate a State-only meeting first, with the intent of achieving an overall State position on Indonesia before sitting down with the other agencies. For most long-term observers, this "chicken or egg" approach is a sad development, but typical of the kind of interagency and communications failures that seem to have governed U.S. policy toward Indonesia since 1998.

In the meantime, our bilateral military relationship with Indonesia will continue to be viewed through the prism of the HRV process, complete with selective enforcement of unwritten policies and shifting interpretations of the Leahy Amendment. Even worse, the U.S. will continue to disallow individuals who are known not to be human rights violators from participating in U.S.-funded training that benefits the United States, simply because they are the members of "tainted" units. Aside from the continuous open lesion such policies generate in military relations with Indonesia, one is left to ponder if the U.S. commitment to resolving past Indonesian human rights abuses warrants holding individuals responsible for the malfeasance of others and if this option is un-American.

NOTES

1. FMF provides "credit" to foreign militaries to purchase equipment, spare parts, and training of U.S. origin. In this system, transactions are transparent and funding never leaves the United States. Indonesia, after being unable to receive FMF due to restrictions, received \$992,000 in FY2005, \$1.234 million in FY2006, \$6.1 million in FY2007, and \$15.7 million (reduced by \$2.1 million by retroactive congressional reporting requirements on efforts to resolve past human rights abuses) in FY2008 and \$15.7 million in FY2009. Indonesia's entire FMF grant was restricted to either maritime security or development of capacity to respond to disaster. It is important to note that FMF is currently allocated or anticipated to support KOPASSUS. From State Department's Web site:

Bureau of Political-Military Affairs, "Indonesia: Security Assistance," U.S. Department of State, <http://www.state.gov/t/pm/64820.htm>.

2. Ibid. IMET is also a "credit" to purchase U.S. professional military education and other technical individual military training. Secretary of State Condoleezza Rice authorized restoration of full IMET to Indonesia in February 2005. Indonesia's FY2006 allocation was \$1.378 million, \$927,000 in FY2007, and \$1.5 million in FY2008. Because IMET recipients are usually "up and comers," IMET is without doubt one of the best programs available to the State Department to help shape and influence the attitudes towards the United States of future foreign military leaders.

3. The same language is recurring and appears in the FY2007, 2008, and 2009 FOAA appropriation.

4. The HRV process varies from embassy to embassy. Many embassies receive the assistance of host nation governmental or even nongovernmental organizations. In the case of Indonesia, no such host nation cooperation is given.

5. The United States had already placed restrictions of "lethal" in 1992 aid to Indonesia because of another event in East Timor, an incident in which Indonesian troops fired on an escalating civil protest in Dili in November 1991 that later became known simply as the "Dili Massacre." This event has drawn some comparison to the incident at Kent State University in Ohio in 1970, where panicked, undertrained troops operating without clear orders opened fire on unarmed protesters. These restrictions were partially lifted in 1995. Military assistance programs were again suspended, however, in the aftermath of the violence and destruction in East Timor following the August 30, 1999, referendum favoring independence.

6. The two were Rick Spier of Littleton, Colorado, and Ted Burgon of Sunriver, Oregon. Spier's widow, Patsy, later began a campaign to pressure congress, which in turn pressured Indonesia to fully investigate the killings. In an unprecedented action, the Indonesian national police and the FBI conducted a joint investigation into the incident. The results of this investigation did little to satisfy nongovernmental organizations, human rights organizations, and some members of Congress, who believed the killers were, or were agents of, the Indonesian military.

7. The second Bali bombing in October 2005 was yet to come.

8. The estimate of loss of life in Indonesia caused by the Indian Ocean tsunami and its aftermath varies widely between 130,000 and 250,000, with over 500,000 displaced. The true figures will likely never be known.

9. Quoted from East Timor Action Network (ETAN) Web site: East Timor and Indonesia Action Network, "ETAN Condemns Administration Waiver Permitting Weapons Sales to Indonesia," news release, November 22, 2005, <http://www.etan.org/news/2005/11/waiver.htm>.

10. A situation that remains today.

11. In FY2008, Israel received over \$2.4 billion and Egypt more than \$1.3 billion from FMF. Under the approval of Congress, the State Department then distributes the remaining FMF allocation throughout the rest of the world. Indonesia's share for FY2008 was \$15.7 million, but was later reduced by \$2.5 million when the new majority in Congress retroactively added language into the appropriation that required Indonesia to report efforts to address past human rights abuses. The yearly worldwide distribution of FMF funds may be found in the State Department's official Web site: U.S. Department of State, "Security Assistance," <http://www.state.gov/t/pm/c17251.htm>.

12. Officially, the leading agency for CT is the Indonesian National Police and their leading CT unit, Special Detachment 88; however, KOPASSUS Unit 81 is far and away the best trained, led, and equipped CT force. Most Indonesian observers are in agreement that in the event of a real terrorist's hostage or barricade situation, KOPASSUS Unit 81 would be the force of choice by the government of Indonesia.

13. Major General Syaful Rizal was then commander of KOPASSUS. Syaful received some U.S.-funded military training in the United States in the mid-1980s and later, while serving in a subsequent assignment as chief of staff for KOPASSUS, was instrumental in the incorporation of instruction developed by the International Committee of the Red Cross (ICRC) on respect for human rights into the KOPASSUS training curriculum.

14. It is literally possible for anyone, no matter how informed, who has Internet access and an axe to grind, to generate allegation of human rights abuses that must be addressed during the vetting process.

15. The Global Peace Operations Initiative addresses major gaps in international peace operations support. The program aims to build and maintain capability, capacity, and effectiveness of peace operations.

16. Exercise "Shanti Doot 2" was the Global Peace Operations Initiative capstone exercise, held in Bangladesh in April 2008; it included twenty-five other Indonesian army participants.

17. Interestingly, President George W. Bush's unpopularity in Indonesia stemmed more from U.S. policy in the Middle East than it did from U.S. military operations in Iraq and Afghanistan.

18. Enpy M. Bayyni, "Obama's Indonesian Classroom," *New York Times*, January 17, 2009.

19. Erwinda Maulia, "Obama Asks Indonesia to Join Hands," *Jakarta Post*, March 14, 2009, <http://thejakartapost.com/news/2009/03/14/obama-asks-indonesia-'join-hands'.html>.

20. Ibid.

21. Anne Marie Murphy, "U.S. Gives Long Overdue Nod to Indonesia," *Asia Times Online*, March 18, 2009, http://www.atimes.com/atimes/southeast_asia/kc18ae02.html.

22. *Smart power* is a term used by Hillary Clinton during her confirmation hearings to describe a shift away from Bush's State Department to revitalizing the mission of diplomacy. She said, "We must use what has been called 'smart power,' the full range of tools at our disposal—diplomatic, economic, military, political, legal, and cultural—picking the right tool, or combination of tools, for each situation," Clinton said in her opening remarks. "With smart power, diplomacy will be the vanguard of foreign policy." AP, "Clinton: Use 'Smart Power' in Diplomacy," CBS News, January 13, 2009, <http://www.cbsnews.com/stories/2009/01/13/politics/main4718044.shtml>.

23. Maulia, "Obama Asks Indonesia to Join Hands."

24. Ibid., 2.

25. U.S. support for the orangutans and the preservation of their habitat in Indonesia is substantial. They are currently the beneficiary of an \$8 million grant spread over two years administered by USAID. Comparing FY2008 figures, the orangutans received \$4 million, while Indonesian military received \$927,000 in IMET.

26. Both FY2010 and FY2011 budget projections provided by U.S. Embassy Jakarta. Interview with current member of U.S. embassy in Jakarta, November 2009.